

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

AMENDED FINAL AGENCY ORDER No. O-11-080

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**AMENDED FINAL AGENCY ORDER**

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IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF  
UNITEDHEALTHCARE OF COLORADO, INC.

Respondent

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THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance ("Division") of UNITEDHEALTHCARE OF COLORADO, INC. (the "Respondent"), pursuant to §§ 10-1-203, 204 and 205, C.R.S., as well as §§ 10-3-1106 and 10-16-416, C.R.S.

The Commissioner has reviewed and considered the market conduct examination report dated August 17, 2010, ("Report"), the relevant examiners' work papers, all written submissions and rebuttals provided by Respondent, and the recommendations of staff. The Commissioner entered a Final Agency Order ("FAO") O-11-076 dated December 17, 2010. The Report was incorporated into the December 17, 2010 FAO by reference (See page 2, provision 10 of FAO). The Report has subsequently been amended ("Amended Report").

The Commissioner hereby issues the within Amended Final Agency Order, incorporating the Amended Report. The Amended Report is attached hereto and incorporated herein. All calculations of time frames which flow from or are the result of the FAO shall now be calculated from the date of this Amended Final Agency Order.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. At all relevant times, the Respondent was licensed by the Division as a health maintenance organization.
2. In accordance with §§ 10-1-203, 204 and 205, C.R.S., as well as §§ 10-3-1106 and 10-16-416, C.R.S., on August 17, 2010, the Division completed a market

conduct examination of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.

3. In conducting the examination, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1)(a), C.R.S.
4. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
5. Respondent delivered to the Division written submissions and rebuttals to the Report.
6. The Commissioner has fully reviewed and considered the Report, all of Respondent's submissions and rebuttals, including but not limited to the Respondent's November 17, 2010 response to the draft market conduct examination report.
7. The examination has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as §§ 10-3-1106, and 10-16-416, C.R.S.
8. This examination was not conducted as an informal investigation of consumer complaints.
9. This examination was not conducted as a targeted on-site examination under § 10-1-212, C.R.S.

### **CONCLUSIONS OF LAW AND ORDER**

10. Unless expressly modified in this Amended Final Agency Order, pursuant to § 10-1-205(3)(a), C.R.S. the Commissioner adopts the Amended Report as filed. The Commissioner finds the Respondent is operating in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
11. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the examination report nor direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to

refile the report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

12. A copy of the Amended Report is attached to the Amended Final Agency Order and is incorporated herein.
13. Issue A1 concerns the following: Failure to reflect in its Access Plan that referrals approved by the plan cannot be changed after the preauthorization is provided unless there is evidence of fraud or abuse. This failure constitutes a violation of §10-16-704, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its access plan to reflect that referrals approved by the plan cannot be changed after preauthorization is provided unless there is evidence of fraud or abuse, as is mandated by Colorado insurance law. The Division's records indicate that the Respondent has revised the language in its access plans which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the requirement to provide information regarding approved referrals, and nothing in this paragraph should be construed as approval of the access plan as a whole.
14. Issue E1 concerns the following: Failure to correctly reflect the mandatory coverage provisions for newborn children born with cleft lip and/or cleft palate or both. This failure constitutes a violation of §10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that its forms reflect the mandated coverage to be provided for the treatment of children born with cleft lip and/or palate as is mandated by Colorado insurance law.
15. Issue E2 concerns the following: Failure to provide coverage for the repair and replacement of prosthetic devices, unless such failure is necessitated by misuse or loss and/or including benefit information that is more limiting than the mandatory coverage provisions. This failure constitutes a violation of §10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that its forms reflect the mandated coverage for prosthetic devices, including repair and replacement unless necessitated by misuse or loss as is mandated by Colorado insurance law.
16. Issue E3 concerns the following: Failure to reflect complete or correct benefit descriptions for mandated mental health services. This failure constitutes a violation of §10-16-104, C.R.S., and Colorado Emergency Regulation 08-E-12

and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect complete and correct benefits for mental health care, in compliance with Colorado insurance law. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the benefit descriptions for mandated mental health services, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.

17. Issue E4 concerns the following: Failure to specify the period to be used for mammography coverage. This failure constitutes a violation of § 10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect a complete description of benefits to be provided for mammography, as is mandated by Colorado insurance law.
18. Issue E5 concerns the following: Failure to reflect all required benefits for Home Health Services and Hospice Care. This failure constitutes a violation of Colorado Insurance Regulation 4-2-8. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect all required benefits for Home Health Services and Hospice Care, as is mandated by Colorado insurance law.
19. Issue E6 concerns the following: Failure to reflect completely the situations in which non-emergency care delivered in an emergency room would be covered. This failure constitutes a violation of Colorado Emergency Regulation 08-E-12 and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised the language regarding coverage for non-emergency care delivered in an emergency room to comply with Colorado insurance law. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the situations in which non-emergency care delivered in an emergency room would be covered, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.
20. Issue E7 concerns the following: Failure to reflect the mandated minimum hours of hospital stay to be provided for normal and cesarean section deliveries. This failure constitutes a violation of § 10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms

to correctly reflect the mandated minimum hours of hospital stay to be provided for normal and cesarean section deliveries. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the benefit descriptions for the mandated minimum hours of hospital stay to be provided for normal and cesarean section deliveries, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.

21. Issue E8 concerns the following: Failure to reflect accurate requirements to qualify as dependent. This failure constitutes a violation of §§10-16-102 and 10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect accurate requirements to qualify as a dependent as is required by Colorado insurance law. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the requirements to qualify as dependent, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.
22. Issue E9 concerns the following: Failure to reflect a complete description of mandatory coverage for child health supervision services. This failure constitutes a violation of § 10-16-104, C.R.S., and Colorado Emergency Regulation 08-E-12 and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect complete descriptions of the mandated child health supervision services, as is required by Colorado insurance law. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the description of mandatory coverage for child health supervision services, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.
23. Issue E10 concerns the following: Failure to reflect correct procedures for adding benefits, making changes, modifications or withdrawals with amendments to the Basic and Standard Health Benefit plans. This failure constitutes a violation of Colorado Emergency Regulation 08-E-12 and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its language concerning amendments to the Basic and Standard Health Benefits Plans, which complies with Colorado insurance law. The Division's records indicate that the Respondent has revised

the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to the procedures for adding benefits, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.

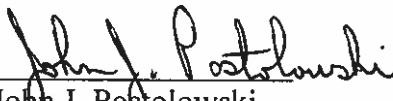
24. Issue E11 concerns the following: Failure to include a disclosure regarding the mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers. This failure constitutes a violation of §§ 10-3-1104 and 10-16-704, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to include in conspicuous, boldface type, an understandable disclosure regarding the mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers, as is required by Colorado insurance law. The Division's records indicate that the Respondent has revised the language in the cited forms which, if fully implemented appears to comply with the corrective actions ordered concerning this violation. The statement is only applicable to a disclosure regarding the mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers, and nothing in this paragraph should be construed as approval of the language in the health benefit plans as a whole.
25. Issue E12 concerns the following: Failure to reflect the correct format and/or benefits in the Basic and Standard Health Benefit Plan Description Forms. This failure constitutes a violation of Colorado Insurance Regulations 4-2-20, Emergency Regulation 08-E-12 and Amended Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all its Colorado Health Benefit Plan Description Forms are in compliance with Colorado insurance law.
26. Issue E13 concerns the following: Failure to reflect that coverage is provided for the full cost of cervical cancer vaccination for all females for whom a vaccination is recommended. This failure constitutes a violation of § 10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its forms to reflect coverage for the full cost of cervical cancer vaccination is provided for all females for whom a vaccination is recommended by the advisory committee on immunization practices for the United States Department of Health and Human Services, in accordance with Colorado insurance law.
27. Issue E14 concerns the following: Failure to reflect the correct percentage payable by the Company for durable medical equipment under the basic and standard health benefit plans. This failure constitutes a violation of Colorado

- Emergency Regulation 08-E-12 and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised and implemented its Schedules of Benefits for both the basic and standard health benefit plans to reflect the correct percentage payable by the Company for durable medical equipment, in accordance with Colorado insurance law.
28. Issue E15 concerns the following: Failure to reflect the correct percentage payable by the Company for prosthetic devices. This failure constitutes a violation of Colorado Emergency Regulation 08-E-12 and Amended Insurance Regulation 4-6-5. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its Schedule of Benefits to reflect the correct percentage to be paid by the Company for prosthetic devices, in accordance with Colorado insurance law.
  29. Issue E16 concerns the following: Failure to reflect benefits and exclusions pertaining to clinical trials that are consistent with mandatory coverage provisions. This failure constitutes a violation of § 10-16-104, C.R.S. No later than 30 days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its Clinical Trials Amendment to reflect benefits and exclusions that are consistent with mandatory coverage provisions in accordance with Colorado insurance law.
  30. The issues and violations described in paragraphs 13 through 29 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of thirty-one thousand and no/100 dollars (\$31,000.00) for the cited violations of Colorado law. Said penalty shall be assessed a 10% surcharge of \$3,100.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$34,100.00. This penalty and surcharge will be due to the Division no later than 30 days from the date of this Amended Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
  31. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Amended Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Amended Report dated August 17, 2010 and the Amended Final Agency Order dated December 30, 2010.
  32. This Amended Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Amended Report, not resolved according to the

terms and conditions in this Amended Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Amended Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law.

33. Copies of the Amended Report and this Amended Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Amended Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
34. Pursuant to § 10-1-205(4)(a), C.R.S., this Amended Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the district court in and for the city and county of Denver and shall be governed by the "State Administrative Procedure Act," article 4 of title 24, C.R.S.
35. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Amended Final Agency Order may be appealed directly to the court of appeals within the applicable time frames of the Colorado Appellate Rules.

**WHEREFORE:** It is hereby ordered that the findings of facts and conclusions of law contained in the Amended Report dated August 17, 2010, are hereby adopted and filed and made an official record of this office, and the above Amended Final Agency Order is hereby approved and effective this 30<sup>th</sup> day of December, 2010.

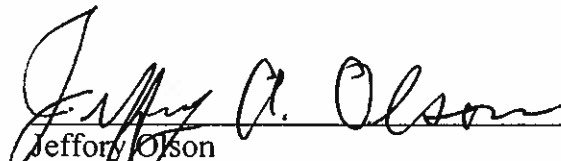
  
John J. Postolowski  
Interim Commissioner of Insurance



**CERTIFICATE OF MAILING**

I hereby certify that on the 30th day of December, 2010, I caused to be deposited the **AMENDED FINAL AGENCY ORDER NO. O-11-080 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF UNITEDHEALTHCARE OF COLORADO, INC.**, in the United States Mail via certified mailing with postage affixed and addressed to:

Ms. Elizabeth K. Soberg, President  
UnitedHealthcare of Colorado, Inc.  
6465 South Greenwood Plaza Blvd.  
Centennial, CO 80111

  
Jeffrey A. Olson  
Senior Market Conduct Examiner  
Division of Insurance